

THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

\* \* \* \* \*

UNITED STATES OF AMERICA	*	July 7, 2020
	*	Plano, Texas
VS.	*	10:27 a.m. - 10:53 a.m.
	*	
<b>MAXINE JULIETTE MITCHELL</b>	<b>*</b>	<b>NO. 4:19-CR-309-3</b>
JAMES ANTHONY MARZIOLI	*	NO. 4:19-CR-309-4

\* \* \* \* \*

**CHANGE OF PLEA HEARING**

BEFORE THE HONORABLE KIMBERLY C. PRIEST JOHNSON  
UNITED STATES MAGISTRATE JUDGE

\* \* \* \* \*

Proceedings recorded by electronic sound recording  
Transcript produced by transcription service

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1 **APPEARANCES:**

2 For the United States:

3 MR. MATTHEW T. JOHNSON  
4 **U.S. Attorney's Office - Sherman**  
5 600 East Taylor, Suite 2000  
6 Sherman, TX 75090

7 For the Defendant:

8 MR. MARK ARONOWITZ  
9 **Law Offices of A & K**  
10 P.O. Box 1201  
11 Texas City, TX 75252

12 Deputy Clerk:

13 JANE AMERSON  
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1                                   P R O C E E D I N G S

2                                   10:27 A.M. - JULY 7, 2020

3                   THE COURT:   4:19-CR-309, United States vs.  
4 Maxine Juliette Mitchell and James Anthony Marzioli.

5                   MR. JOHNSON:   Matt Johnson for the United  
6 States and we're ready, Your Honor.

7                   MR. ARONOWITZ:   Mark Aronowitz for the  
8 defendants.

9                   THE COURT:   All right.   Sir and ma'am, please  
10 raise your right hand to be sworn.

11                  DEPUTY CLERK:   Do you solemnly swear the  
12 testimony you are about to give in the case before the  
13 Court shall be the truth, the whole truth, and nothing  
14 but the truth, so help you God?

15                  DEFENDANT MARZIOLI:   I do.

16                  DEFENDANT MITCHELL:   I do.

17                  THE COURT:   All right.   We're here this  
18 morning for your Change of Plea Hearing.   I'm going to  
19 ask you a series of questions.   If you'll please answer  
20 in the order that I called your case.   So, Ms. Mitchell,  
21 if you'll please answer first; and Mr. Marzioli, if  
22 you'll answer second.

23                                  Please state your full name and age for  
24 the record.

25                  DEFENDANT MITCHELL:   Maxine Mitchell.   I'm 30

1 years old.

2 DEFENDANT MARZIOLI: James Anthony Marzioli,  
3 35.

4 THE COURT: What is the last grade of school  
5 you've completed?

6 DEFENDANT MITCHELL: Some college.

7 DEFENDANT MARZIOLI: College.

8 THE COURT: All right. Have you graduated  
9 from college?

10 DEFENDANT MITCHELL: No, I have not.

11 THE COURT: Okay.

12 DEFENDANT MARZIOLI: Yes, ma'am.

13 THE COURT: Okay. Have you ever been  
14 diagnosed with any mental illness or problem?

15 DEFENDANT MITCHELL: No, ma'am.

16 DEFENDANT MARZIOLI: No, ma'am.

17 THE COURT: Are you currently under the  
18 influence of any drug or alcohol?

19 DEFENDANT MITCHELL: No, ma'am.

20 DEFENDANT MARZIOLI: No, ma'am.

21 THE COURT: Counsel, do you believe your  
22 clients are competent to proceed here today?

23 DEFENDANT MARZIOLI: Yes, Your Honor.

24 THE COURT: Each of you have the right to have  
25 your plea taken by the District Judge assigned to your

1 case, or you can have me, a United States Magistrate  
2 Judge, take your plea and make a recommendation to the  
3 District Court. Do you understand that you have this  
4 right?

5 DEFENDANT MARZIOLI: Yes, ma'am.

6 DEFENDANT MITCHELL: Yes, ma'am.

7 THE COURT: I've received a signed Waiver and  
8 Consent Form from both of you. Do you understand --  
9 well, let me ask you first, did you have an opportunity  
10 to review this document with your attorney before you  
11 signed it?

12 DEFENDANT MITCHELL: Yes, ma'am.

13 DEFENDANT MARZIOLI: Yes, ma'am.

14 THE COURT: And do you understand that by  
15 signing this Waiver and Consent Form, you are agreeing  
16 to proceed before me today with your Change of Plea  
17 Hearing?

18 DEFENDANT MARZIOLI: Yes, ma'am.

19 DEFENDANT MITCHELL: Yes, ma'am.

20 THE COURT: I find the Waiver and Consents  
21 have been knowingly and voluntarily given.

22 Have each of you had an opportunity to  
23 fully review and discuss your case with your attorney?

24 DEFENDANT MARZIOLI: Yes, ma'am.

25 DEFENDANT MITCHELL: Yes, ma'am.

1           THE COURT: All right. And just for clarity  
2 of the record, Ms. Mitchell, if you'll please answer  
3 first, and then you answer. Thank you.

4           Are you satisfied with the advice and  
5 representation you've been given?

6           DEFENDANT MITCHELL: Yes, ma'am.

7           DEFENDANT MARZIOLI: Yes, ma'am.

8           THE COURT: Each of you have been charged in  
9 an underlying Indictment. Have you received a copy of  
10 that Indictment?

11          DEFENDANT MITCHELL: Yes, ma'am.

12          DEFENDANT MARZIOLI: Yes, ma'am.

13          THE COURT: And you do have the right to have  
14 the Indictment read out loud at this time, or you may  
15 waive that right. What would you like to do?

16          DEFENDANT MITCHELL: Waive it.

17          DEFENDANT MARZIOLI: Waive that right.

18          THE COURT: Do you understand the nature of  
19 the charges alleged against you?

20          DEFENDANT MITCHELL: Yes, ma'am.

21          DEFENDANT MARZIOLI: Yes, ma'am.

22          THE COURT: I am going to ask Mr. Johnson at  
23 this time to read aloud the elements of the offense  
24 that you're pleading guilty to. These are the elements  
25 that the Government would be required to prove beyond a

1 reasonable doubt to establish your guilt if you were to  
2 go to trial.

3 Mr. Johnson.

4 MR. JOHNSON: Yes, Your Honor. The elements  
5 are the same for both defendants that we'd have to  
6 prove beyond a reasonable doubt as follows:

7 That you or one or more persons in some  
8 way or manner made an agreement to commit the crime  
9 charged in the Indictment, that is, to possess with  
10 intent to manufacture and distribute 500 grams or more  
11 of a mixture or substance containing a detectable  
12 amount of methamphetamine, or 50 grams or more of  
13 methamphetamine actual, 28 grams or more of an amount  
14 of a mixture or substance containing a detectable  
15 amount of cocaine base, and an amount of a mixture or  
16 substance containing a detectable amount of cocaine;

17 That you knew the unlawful purpose of the  
18 agreement; that you joined in it willfully, that is,  
19 with intent to further its unlawful purpose;

20 That the overall scope of the conspiracy  
21 involved 500 grams or more of a mixture or substance  
22 containing a detectable amount of methamphetamine, 50  
23 grams or more of methamphetamine actual, 28 grams or  
24 more of an amount of a mixture or substance containing  
25 a detectable amount of cocaine base, and an amount of a

1 mixture or substance containing a detectable amount of  
2 cocaine;

3 That you knew or reasonably should have  
4 known that the scope of the conspiracy involved those  
5 amounts of narcotics.

6 THE COURT: All right, thank you. Do you  
7 understand the essential elements set forth?

8 DEFENDANT MITCHELL: Yes, ma'am.

9 DEFENDANT MARZIOLI: Yes, ma'am.

10 THE COURT: Do you admit that you committed  
11 each one of those elements?

12 DEFENDANT MITCHELL: Yes, ma'am.

13 DEFENDANT MARZIOLI: Yes, ma'am.

14 THE COURT: I've received plea documents in  
15 your case that consists of a Plea Agreement, a Plea  
16 Agreement Addendum, and a Factual Basis. Can you  
17 confirm for the record that you signed each one of  
18 these documents?

19 DEFENDANT MITCHELL: Yes, ma'am.

20 DEFENDANT MARZIOLI: Yes, ma'am.

21 THE COURT: Did you review each one of the  
22 documents with your attorney before you signed them?

23 DEFENDANT MITCHELL: Yes, ma'am.

24 DEFENDANT MARZIOLI: Yes, ma'am.

25 THE COURT: At this time I'm going to review

1 some of the paragraphs contained in your Plea  
2 Agreement. Starting with paragraph 1 entitled Rights  
3 of the Defendant, this paragraph lists constitutional  
4 rights that you have:

5 To plead not guilty, to have a trial by a  
6 jury, to have your guilt proved beyond a reasonable  
7 doubt, to confront and cross-examine witnesses and call  
8 witnesses in your defense, and to not be compelled to  
9 testify against yourself.

10 Do you understand that you have these  
11 constitutional rights?

12 DEFENDANT MITCHELL: Yes, ma'am.

13 DEFENDANT MARZIOLI: Yes, ma'am.

14 THE COURT: Going down to paragraph 2, if you  
15 plead guilty in this case, you will waive those  
16 constitutional rights. Do you understand that?

17 DEFENDANT MITCHELL: Yes, ma'am.

18 DEFENDANT MARZIOLI: Yes, ma'am.

19 THE COURT: Paragraph 3 lists the minimum and  
20 maximum statutory penalties that can be imposed in your  
21 case, and they are as follows:

22 Imprisonment for a period not less than 10  
23 years and not more than life, a fine not to exceed \$10  
24 million or twice any pecuniary gain to you or loss to  
25 the victim, a term of supervised release of at least

1 five years, a mandatory Special Assessment of \$100,  
2 forfeiture of property involved in or traceable to the  
3 offense, restitution to victims of the community, and  
4 costs of incarceration and supervision.

5 Do you understand those are the minimum  
6 and maximum statutory penalties that may be imposed in  
7 your case?

8 DEFENDANT MITCHELL: Yes, ma'am.

9 DEFENDANT MARZIOLI: Yes, ma'am.

10 THE COURT: The next paragraph discusses the  
11 United States Sentencing Guidelines. Essentially,  
12 those Guidelines will be used by the Court in  
13 determining your sentence, but they are not binding  
14 upon the Court. Do you understand that?

15 DEFENDANT MITCHELL: Yes, ma'am.

16 DEFENDANT MARZIOLI: Yes, ma'am.

17 THE COURT: Have each of you had an  
18 opportunity to review the applicable Guideline range  
19 and provisions in your case with your attorney?

20 DEFENDANT MITCHELL: Yes, ma'am.

21 DEFENDANT MARZIOLI: Yes, ma'am.

22 THE COURT: Paragraph 5, entitled Guideline  
23 Stipulations, lists certain Guideline provisions that  
24 you and the Government have agreed should apply in your  
25 case. Do you understand that the Court is not bound by

1 these stipulations?

2 DEFENDANT MITCHELL: Yes, ma'am.

3 DEFENDANT MARZIOLI: Yes, ma'am.

4 THE COURT: So what that means is, is if the  
5 Government -- or if the Court applies a different  
6 Guideline provision than what you and the Government  
7 have agreed should apply, you will still be bound by  
8 this Plea Agreement. Do you understand that?

9 DEFENDANT MITCHELL: Yes, ma'am.

10 DEFENDANT MARZIOLI: Yes, ma'am.

11 THE COURT: All right. Sir, your Plea  
12 Agreement contains Paragraph 8, entitled Forfeiture.  
13 And the paragraph states that you're agreeing to  
14 forfeit to the United States the two items specifically  
15 set forth in subsections (a) and (b), that is, the  
16 handgun as specified in subsection (a) and any  
17 ammunition related to this case. Is that correct?

18 DEFENDANT MARZIOLI: Yes, ma'am.

19 DEFENDANT MITCHELL: Yes, ma'am.

20 THE COURT: Paragraph 10 for Ms. Mitchell and  
21 Paragraph 11 for Mr. Marzioli, entitled Voluntary Plea,  
22 this paragraph states that your plea of guilty is  
23 freely and voluntarily made. Has anyone tried to force  
24 you or threaten you to plead guilty in this case?

25 DEFENDANT MITCHELL: No, ma'am.

1           DEFENDANT MARZIOLI:  No, ma'am.

2           THE COURT:  Other than this Plea Agreement,  
3 have any promises been made to you in an effort to  
4 induce your plea of guilty?

5           DEFENDANT MITCHELL:  No, ma'am.

6           DEFENDANT MARZIOLI:  No, ma'am.

7           THE COURT:  The next paragraph, entitled  
8 Waiver of Right to Appeal or Otherwise Challenge your  
9 Sentence, states that you're agreeing to give up your  
10 appellate rights in this case with the exception of two  
11 limited circumstances.  One is that the sentence  
12 imposed exceeds the statutory maximum that we just  
13 discussed.  The other is your right to appeal or seek  
14 collateral review of a claim of ineffective assistance  
15 of counsel.  Are you in fact agreeing to give up your  
16 appellate rights in this case with the exception of  
17 those two circumstances?

18           DEFENDANT MITCHELL:  Yes, ma'am.

19           DEFENDANT MARZIOLI:  Yes, ma'am.

20           THE COURT:  All right.  Have you ever been  
21 convicted of a felony before?

22           DEFENDANT MITCHELL:  No, ma'am.

23           DEFENDANT MARZIOLI:  No, ma'am.

24           THE COURT:  Do you understand that in addition  
25 to the sentence imposed, you will also lose certain

1 rights that you now hold as a citizen, to vote, serve  
2 on a jury, and possess a firearm?

3 DEFENDANT MARZIOLI: Yes, ma'am.

4 DEFENDANT MITCHELL: Yes, ma'am.

5 THE COURT: If you'll look with me at your  
6 Factual Basis, Mr. Johnson, would you please summarize  
7 the underlying Factual Basis for each case.

8 MR. JOHNSON: Yes, Your Honor. It's identical  
9 for both defendants. The defendants are the same  
10 persons charged in the Indictment. The events  
11 described in their Indictments occurred in the Eastern  
12 District of Texas and elsewhere:

13 The defendants and one or more persons in  
14 some way or manner made an agreement to commit the  
15 crime charged in the Indictment, to knowingly and  
16 intentionally possess with intent to distribute and  
17 dispense at least 500 grams or more of a mixture or  
18 substance containing a detectable amount of  
19 methamphetamine, or 50 grams or more of methamphetamine  
20 actual, 28 grams or more of an amount of a mixture or  
21 substance containing a detectable amount of cocaine  
22 base, and an amount of mixture or substance containing  
23 a detectable amount of cocaine, and that the defendant  
24 knew the unlawful purpose of the agreement and joined  
25 in it with the intent to further it, and that they

1 knew that the amount involved during the term of the  
2 conspiracy involved at least 500 grams or more of a  
3 mixture or substance containing a detectable amount of  
4 methamphetamine, or 50 grams or more of methamphetamine  
5 actual, 28 grams or more of an amount of a mixture or  
6 substance containing a detectable amount of cocaine  
7 base, an amount of a mixture or substance containing a  
8 detectable amount of cocaine; this amount was involved  
9 in the conspiracy after the defendants entered the  
10 conspiracy, was reasonably foreseeable to them, and was  
11 part of a jointly undertaken activity.

12 THE COURT: Thank you.

13 Is everything in your Factual Basis true  
14 and correct?

15 DEFENDANT MITCHELL: Yes, ma'am.

16 DEFENDANT MARZIOLI: Yes, ma'am.

17 THE COURT: Are there any changes you'd like  
18 to make to it at this time?

19 MR. ARONOWITZ: Not from the defense, Your  
20 Honor.

21 THE COURT: For either of them?

22 MR. ARONOWITZ: Either of them, Your Honor.

23 THE COURT: Okay.

24 All right. Ms. Mitchell, in your own  
25 words, please summarize the criminal conduct that

1 you're pleading guilty to.

2           DEFENDANT MITCHELL: Yeah, we were involved in  
3 selling drugs.

4           THE COURT: All right. And you agree with --  
5 well, when you say "we," that means that you and at  
6 least one other person; correct?

7           DEFENDANT MITCHELL: Yes.

8           THE COURT: Do you agree with the amounts that  
9 are stated in the Factual Basis, and that is that you  
10 knew or should have known that the persons you were  
11 distributing methamphetamine and cocaine with were  
12 responsible for at least 500 grams or more of a  
13 substance containing methamphetamine, or 50 grams of  
14 actual methamphetamine, and 28 grams of cocaine base,  
15 or an amount containing a detectable amount of cocaine  
16 base?

17           DEFENDANT MITCHELL: Yes -- yes, Your Honor.

18           THE COURT: Okay. Do you agree with that  
19 amount?

20           DEFENDANT MITCHELL: Yes, I agree.

21           THE COURT: Okay.

22           All right. Mr. Marzioli, in your own  
23 words, please summarize the criminal conduct that  
24 you're pleading guilty to.

25           DEFENDANT MARZIOLI: Myself and Ms. Mitchell

1 and a couple of other people were in agreement to sell  
2 coke and methamphetamines.

3 THE COURT: All right. And you said y'all  
4 were in agreement. Did you actually participate in  
5 that?

6 DEFENDANT MARZIOLI: Yes, ma'am.

7 THE COURT: Okay. Do you agree with the  
8 amount stated --

9 DEFENDANT MARZIOLI: Yes, ma'am.

10 THE COURT: -- regarding the methamphetamine  
11 and cocaine?

12 DEFENDANT MARZIOLI: Yes, ma'am.

13 THE COURT: Are counsel satisfied there's a  
14 Factual Basis to support both pleas?

15 MR. JOHNSON: Yes, Your Honor.

16 MR. ARONOWITZ: Defense is satisfied, Your  
17 Honor, for both.

18 THE COURT: All right. Counsel, let me ask  
19 you, have you had an opportunity to fully review and  
20 discuss the case with your clients?

21 MR. ARONOWITZ: Yes, I have, Your Honor.

22 THE COURT: Do you join in each of their  
23 decisions to plead guilty?

24 MR. ARONOWITZ: Yes, I do, Your Honor.

25 THE COURT: All right. At this time I'll ask

1 both of you, with respect to Count One of the  
2 Indictment, which charges a violation of 21 United  
3 States Code, 846, Conspiracy to Possess with the Intent  
4 to Manufacture and Distribute a Mixture or Substance  
5 Containing a Detectable Amount of Methamphetamine and  
6 Cocaine, how do you plead, guilty or not guilty?

7 DEFENDANT MITCHELL: Guilty.

8 DEFENDANT MARZIOLI: Guilty.

9 THE COURT: I'll accept your plea of guilty to  
10 Count One. I'm going to make the following findings on  
11 the record for both of your cases:

12 The Court finds that you are competent to  
13 plead, you have had assistance of counsel, you  
14 understand your trial rights and the nature of the  
15 charges alleged against you, you understand the minimum  
16 and maximum penalties that can be imposed in your case.  
17 And while the Court will refer to the Sentencing  
18 Guidelines in determining your sentence, those  
19 Guidelines are not mandatory or binding upon the Court.  
20 I find that your plea is knowing and voluntary, there  
21 is a Factual Basis to support your plea. I will make a  
22 recommendation that the District Court accept your plea  
23 of guilty. You do have 14 days to make an objection to  
24 that recommendation.

25 All right, with respect to the issue of

1 custody for Ms. Mitchell, I've received your report  
2 from Pretrial stating that she has been compliant with  
3 conditions. However, because of the offense she's  
4 pleading guilty to, the statute mandates that she be  
5 taken into custody. Is there any reason that that  
6 shouldn't be the case?

7 MR. JOHNSON: Your Honor, because she's in  
8 compliance and due to the nature of the pandemic, we  
9 feel like that would be adequate reason to allow her to  
10 remain on bond.

11 THE COURT: I'll tell you, I don't disagree  
12 with that. I just don't have flexibility under the  
13 statute unless it's in very limited circumstances, and  
14 I don't know the language off the top of my head. I  
15 want to look at it to make sure that that's permissible.

16 MR. ARONOWITZ: Your Honor, our position is  
17 that she meets the exception because she has been  
18 enrolled in a continuing treatment program.

19 THE COURT: Yeah, that's not an exception.  
20 Once a plea to an offense that mandates, that's not an  
21 exception. It changes with respect to what I have  
22 authority to allow someone to be out on bond under  
23 conditions. Once a plea of this offense is entered,  
24 it's not up to me.

25 Mr. Johnson, do you recall under the

1 statute what the specific language is regarding this  
2 issue?

3 MR. JOHNSON: There are I think two prongs  
4 that have to be met. I believe there has to be an  
5 exceptional circumstance and a stipulation by the  
6 Government as to -- in other words, I think the  
7 Government has to agree.

8 THE COURT: Well, it's more than just the  
9 Government agrees, though. And that exceptional  
10 circumstance language I don't recall specifically. I'm  
11 going to take a two-minute recess because I can get to  
12 the language in my office quickly, because I want to  
13 resolve this issue now. So let me go pull that statute  
14 and then I'll be back with you.

15 **[10:44 a.m. - Recess begins]**

16 **[10:50 a.m. - Recess ends]**

17 THE COURT: All right, before I address this  
18 issue, is there anything further from counsel as to  
19 Mr. Marzioli?

20 MR. JOHNSON: No, Your Honor.

21 MR. ARONOWITZ: Nothing from the defense, Your  
22 Honor.

23 THE COURT: All right, we'll be adjourned in  
24 his case.

25 Okay. So the statute that's applicable

1 here, the language is specifically that the provisions  
2 as to flight and danger are the 3143(a)(1) provision  
3 regarding -- and I think it's a clear and convincing  
4 standard that the defendant is not likely to flee or  
5 pose a danger to the community, combined with an  
6 exceptional reason, and that's not really further  
7 defined.

8                   Given the status of COVID-19 in the jails,  
9 I do believe that that would be an exceptional reason.  
10 I know -- I recall in this case we had one incident  
11 early on regarding a pretrial violation. And then I  
12 think since that time Ms. Mitchell has been enrolled  
13 in -- isn't it inpatient or some sort of treatment  
14 facility?

15                   MR. ARONOWITZ: It was inpatient and now she's  
16 doing after-care.

17                   THE COURT: Okay. And so -- and I don't  
18 believe there's been any issues with respect to  
19 violations since that time. So I think there is a  
20 basis to find clear and convincing evidence that  
21 Ms. Mitchell is not likely to flee or pose a danger to  
22 the community.

23                   Mr. Johnson, it sounds like you're in  
24 agreement with that; is that correct?

25                   MR. JOHNSON: Yes, Your Honor.

1           THE COURT: All right. Okay, I'm going to  
2 find that there is an exception here and allow you,  
3 Ms. Mitchell, to remain under the conditions of release  
4 that you have been on, including the treatment program  
5 that you've been involved in. I'm glad that you're  
6 doing well.

7                   Anything further from counsel?

8           MR. JOHNSON: No, Your Honor.

9           MR. ARONOWITZ: Nothing from the defense, Your  
10 Honor.

11           THE COURT: All right, we'll stand adjourned.

12           MR. ARONOWITZ: Thank you.

13                   ***[10:53 a.m. - Proceeding adjourned]***

14

15                   C E R T I F I C A T I O N

16

17           I certify that the foregoing is a correct  
18 transcript of the electronic sound recording of the  
19 proceedings in the above-entitled matter.

20

21

22   /s/ Gwen Reed

23   8-27-21

24

25